

**UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF PENNSYLVANIA**

<b>AARON J. NICHOLS, <i>et al.</i>,</b>	<b>:</b>	
<b>Plaintiffs</b>	<b>:</b>	<b>CIVIL ACTION NO. 4:21-218</b>
<b>v.</b>	<b>:</b>	<b>(JUDGE MANNION)</b>
<b>C.O. KONYCKI, <i>et al.</i>,</b>	<b>:</b>	
<b>Defendants</b>	<b>:</b>	

**ORDER**

Pending before the court is the report of Magistrate Judge William I. Arbuckle, which recommends that the plaintiffs' motion for default judgment be denied without prejudice. (Doc. 40). The plaintiffs have failed to file objections to the report and recommendation.

Where no objection is made to a report and recommendation, the court should, as a matter of good practice, "satisfy itself that there is no clear error on the face of the record in order to accept the recommendation." Fed. R. Civ. P. 72(b), advisory committee notes; see also *Univac Dental Co. v. Dentsply Intern., Inc.*, 702 F.Supp.2d 465, 469 (M.D.Pa. 2010) (citing *Henderson v. Carlson*, 812 F.2d 874, 878 (3d Cir. 1987) (explaining judges should give some review to every report and recommendation)). Nevertheless, whether timely objections are made or not, the district court

may accept, not accept, or modify, in whole or in part, the findings or recommendations made by the magistrate judge. 28 U.S.C. §636(b)(1); Local Rule 72.31.

Judge Arbuckle recommends that the plaintiffs' motion for default judgment against defendant Kerschner be denied without prejudice in light of the plaintiffs' failure to file an affidavit in compliance with the Servicemembers Civil Relief Act, 50 U.S.C. §3931. Moreover, Judge Arbuckle cites the preferred practice in multi-defendant litigation to withhold granting default judgment until the action is resolved on its merits against the non-defaulting defendants. Upon review of Judge Arbuckle's report and recommendation, the court finds no clear error of record. Moreover, the court agrees with the sound reasoning which led Judge Arbuckle to his conclusions. As such, the court will adopt Judge Arbuckle's report in its entirety.

**NOW, THEREFORE, IT IS HEREBY ORDERED THAT:**

**(1)** The report and recommendation of Judge Arbuckle (**Doc. 40**) is **ADOPTED IN ITS ENTIRETY** as the decision of the court.

**(2)** The plaintiff's motion for default judgment against defendant Kerschner (**Doc. 31**) is **DENIED WITHOUT PREJUDICE**.

(3) The instant action is **REMANDED** to Judge Arbuckle for all further pre-trial matters.

*s/ Malachy E. Mannion*

**MALACHY E. MANNION**

**United States District Judge**

**DATE: February 28, 2023**

21-218-01